

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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STEVEN HOCKMAN, :

Plaintiff, :

- against - : No. 3:01CV1518 (GLG)

JO ANNE BARNHART, :
COMMISSIONER SOCIAL SECURITY :
ADMINISTRATION, :

Defendant. :
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Order Affirming the Decision of the Commissioner

This case is before the Court on the pro se Plaintiff's timely appeal of the Defendant's denial of his application for disability benefits filed on April 1, 1998, under the Supplemental Security Income ("SSI") program. Defendant has moved for an order affirming the decision of the Commissioner [Doc. # 12]. Plaintiff has not responded to this motion. For the reasons set forth below, the motion will be **granted** and the final decision of the Commissioner **affirmed**.

Procedural Background

Plaintiff's complaint, appealing the final decision of the Commissioner, was filed in August of 2001. Although Plaintiff has filed this appeal pro se, he was represented by counsel at his administrative hearing and before the Appeals Council.

In February, 2002, the Clerk's Office issued a Local Rule 16(a) Notice regarding lack of prosecution. Plaintiff responded,

requesting additional time to find counsel. On April 1, 2002, the Court issued an order directing the parties to submit a briefing schedule. On April 15, 2002, the Government filed its answer to the complaint and filed the administrative record with the Court.

The Court heard nothing further from Plaintiff. On September 18, 2002, the Government wrote Plaintiff advising him in detail what he needed to do to pursue his appeal. The letter very clearly advised Plaintiff:

**IF YOU DO NOT FILE A MOTION AND A MEMORANDUM
OF LAW EXPLAINING THE REASONS AND THE LEGAL
ARGUMENT IN SUPPORT OF YOUR CLAIM OF
DISABILITY, THE COURT WILL DISMISS YOUR CASE.**

If the court dismisses your case that will mean that you lose this lawsuit and the Social Security Administration does not have to pay you disability benefits.

If you do not understand anything that I have said in this letter, please call me so we can discuss your questions.

After hearing nothing from the Plaintiff, the Court ordered Plaintiff to file a motion and supporting memorandum by November 29, 2002, explaining why the decision of the Social Security Commissioner should be reversed or why his case should be remanded. If he failed to do so, he was advised that his case would be dismissed for failure to prosecute, without further notice. Upon motion by the Defendant, which was consented to by Plaintiff, this deadline was subsequently extended to April 30, 2003. Still, the Court heard nothing from Plaintiff. In August

2003, a second notice regarding lack of prosecution was sent to all parties. Plaintiff did not respond to this notice.

On January 28, 2004, the Defendant filed the instant motion for an order affirming the decision of the Commissioner, which Plaintiff has not opposed.¹

Discussion

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted for a continuous period of not less than 12 months." 42 U.S.C. §§ 416(i)(1), 423(d)(1). "[A]n individual . . . shall be determined to be under such a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d).

Plaintiff, born in 1956, claimed that he had been disabled since at least April 1, 1998. In October 1997, he fell from a truck, sustaining a severe left foot fracture. Following

¹ In the motion, the Defendant notes that Plaintiff was awarded SSI benefits on a subsequent application, effective April 2001, based upon a mental impairment, which was not part of his earlier claim. It may be that, because of this subsequent award, Plaintiff no longer intends to pursue this appeal. In any event, he has not opposed the motion of the Defendant.

surgery, he developed osteomyelitis and an open ulcer in his left foot. Several months later, he developed a radial nerve palsy in his right dominant hand, arm, and shoulder, which his doctors attributed to pressure from his crutch that he was using for walking. Plaintiff also complained of lower back problems and a residual limp.

Plaintiff has a high school education. Prior to his accident, he primarily had been self-employed as a repairer of electric signs. As of the hearing in March 1999, he had not engaged in any substantial gainful activity since the accident in October 1997.

After considering Plaintiff's testimony, the medical evidence from his treating doctors, as well as the reports of two non-examining state agency physicians, the Administrative Law Judge ("ALJ") found that Plaintiff retained the residual functional capacity to perform sedentary work. (ALJ Decision dtd. June 24, 1999). Based on the range of work he could perform, the absence of any non-exertional limitations, his age and education, using the Medical-Vocational Guidelines (the "grid"), the ALJ found that Plaintiff was not disabled. The Appeals Council denied Plaintiff's request for review of the ALJ's decision and, thus, the decision of the ALJ became the

final decision of the Commissioner.² (Action of Appeals Council on Request for Review dtd. June 8, 2001).

After a review of the administrative record, the Court concludes that there is substantial evidence to support the final decision of the Commissioner denying Plaintiff's application for SSI benefits. See 42 U.S.C. § 405(g). No medical doctor opined that Plaintiff had been disabled for the minimum twelve-month period required to meet the definition of "disabled" under the Social Security Act. The medical records from Plaintiff's treating physicians show that his injuries were resolving. Although Plaintiff had complaints of pain, no doctor offered an opinion that he was disabled by pain. The only evidence that Plaintiff was disabled came from his own testimony.

The reports of the two state agency physicians, who reviewed Plaintiff's medical records, indicated that Plaintiff could lift up to 20 pounds, stand for six hours in a work day, sit at least six hours, push and pull using arms and/or leg controls, occasionally climb, balance, stoop, kneel and crouch. They concluded that he could perform light exertional work and, although he could not return to his former occupation, given his

² Plaintiff had submitted to the Appeals Council new medical records, covering treatment as a result of a June 25, 2000 pedestrian accident, which was subsequent to the date of the ALJ's decision. The Appeals Council advised Plaintiff that he needed to file a new application in order to receive a determination on the issue of disability after June 25, 2000.

age and education, he should be able to adjust to unskilled work.

"The question for our review is not whether the evidence preponderates in the Secretary's favor. 'Congress has instructed us that the factual findings of the Secretary, if supported by substantial evidence, shall be conclusive.'" Dumas v. Schweiker, 712 F.2d 1545, 1553 (2d Cir. 1983) (quoting Rutherford v. Schweiker, 685 F.2d 60, 62 (2d Cir. 1982)). Although there clearly was evidence that Plaintiff suffered from a physical impairment, that is not sufficient to warrant an award of disability benefits. There must be evidence that Plaintiff is precluded from engaging in any substantial gainful activity by reason of the impairment. Id. at 1550.

There was substantial evidence in the administrative record to support the ALJ's finding that Plaintiff retained the ability to perform sedentary work and that he was not "disabled," as that term is defined in the Social Security Act. Accordingly, the decision of the Commissioner is affirmed.

SO ORDERED.

Dated: March 9, 2004.
Waterbury, Connecticut.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge